

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION
DOMESTIC RELATIONS BRANCH**

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|----------------|---|--------------------------|
| INEZ TOBIAS, | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Case No. 2021 DRB 001971 |
| | : | Judge Deborah J. Israel |
| GEORGE TOBIAS, | : | |
| Defendant. | : | |

**ORDER GRANTING ORAL MOTION FOR CONSTRUCTIVE SERVICE
AND SETTING CONTINUED INITIAL HEARING**

This matter came before the Court through Plaintiff Inez Tobias' Complaint for Divorce, filed October 4, 2021. In her Complaint, Plaintiff alleges she was married to Defendant George Tobias on December 30, 1983, in Washington, D.C, and that the parties separated in 1985. This Court held an Initial Hearing on November 30, 2021. Plaintiff appeared, pro se. Defendant did not appear. The Court heard testimony from Plaintiff that corroborated the allegations set forth in her Complaint.

This Court now treats Plaintiff's testimony at the Initial Hearing as an oral motion for constructive service. Plaintiff's request for constructive service need not be in writing, as the D.C. Court of Appeals has held that "motions incidental to or made during a hearing or trial made be made orally; formal written notice is not required. Rule 7(b)(1) specifically exempts oral motions in such circumstances from rigid requirements of particularity, since they will be recorded in the minutes of the trial or hearing." *Bennings Associates v. Joseph M. Zamoiski Co.*, 379 A.2d 1171, 1173 (D.C. 1977). Furthermore, the Court of Appeals has previously permitted the use of oral motions regarding service of process. For example, in *Packheiser v. Miller*, 875 A.2d 645 (D.C. 2005), the Court of Appeals found no issue with the trial court granting the Plaintiff's oral motion to extend Plaintiff's deadline to achieve service of process under Rule

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4(m) for an additional sixty days. This analogous case provides the authority for Plaintiff Tobias to utilize an oral motion for constructive service. Having found the requisite authority, the Court will now answer the substantive question of whether Plaintiff has met the requirements to be able to effectuate constructive service.

In order for the Court to permit constructive service, a plaintiff in a divorce action must provide the Court with the following information:

(1) The time and place at which the parties last resided together as spouses; (2) the last time the parties were in contact with each other; (3) the name and address of the last employer of the defendant either during the time the parties resided together or at a later time if known to the plaintiff; (4) the names and addresses of those relatives known to be close to the defendant; and (5) any other information which could furnish a fruitful basis for further inquiry by one truly bent on learning the present whereabouts of the defendant. From such basic information, the plaintiff should then detail for the court the particular efforts which have been made in the effort to ascertain the defendant's present address. *Bearstop v. Bearstop*, 377 A.2d 405, 408 (D.C. 1977).

At the Initial Hearing, Plaintiff testified to the following: (1) that the parties were married in 1983, (2) that the parties separated in 1985, (3) that the last time they had communications was in April of 1985, and (4) that Plaintiff does not know the identities of Defendant's family members or friends. As the Court of Appeals noted in *Bearstop*, "there may be circumstances where the marriage or courtship was of such short duration that the party seeking the divorce may not be presumed to have had much information about the missing spouse. In such cases, the court, by interrogating the plaintiff, may conclude that the kind of efforts which would ordinarily be deemed essential to a diligent search would not prove fruitful." *Id.* In this case, the courtship lasted only two years—lending credence to the notion that Plaintiff has less information regarding Defendant than the average spouse. This effect is compounded by the fact a great deal of time has lapsed since the parties last communicated with one another (36 years). Regarding her recent efforts to locate Defendant, Plaintiff testified to the fact that she investigated obituary records, and found no

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indication that Defendant had died, and that she looked up Defendant's last known address, and discovered it had been sold. As such, Plaintiff has pursued "all the channels of available information," as required by the D.C. Court of Appeals in *Bearstop*, and shall be permitted to pursue constructive service by posting. *See* D.C. Code § 13-340(a) (authorizing service by posting in lieu of publication). The Court will direct the Clerk's Office to post the notice below.

In addition, prior to the next hearing, **Plaintiff must file an Affidavit in Compliance with the Servicemembers Civil Relief Act.** If Plaintiff has questions about how to meet this requirement, she may contact the Family Court Self-Help Center by calling telephone number 202-879-0096. The Court cannot grant a judgment of divorce until the SCRA Affidavit is docketed with the Court.

Accordingly, it is, this 28th day of December 2021, hereby,

ORDERED, that Plaintiff Inez Tobias' oral motion for constructive service is **GRANTED**. It is further

ORDERED, that the Clerk's Office of the Family Court of the Superior Court of the District of Columbia shall post the following notice on the Court's website for a period of twenty-one calendar days.

[Order continues on next page:]

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Superior Court of the District of Columbia

Case No. 2021 DRB 001971

Inez Tobias, Plaintiff,

Versus

George Tobias, Defendant.

Plaintiff Inez Tobias has filed a Complaint for Divorce.

The Court will hold a remote Continued Initial Hearing on this request on February 9, 2022 at 11:45 AM. If Defendant George Tobias does not appear at the hearing or otherwise respond to the Complaint, the Court may enter default against Defendant and thereafter proceed without him.

So ordered on December 28, 2021.

Judge Deborah J. Israel, Superior Court of the District of Columbia.

IT IS FURTHER ORDERED, that Plaintiff shall file by **January 26, 2022** an Affidavit in Compliance with the Servicemembers Civil Relief Act. It is further

ORDERED, the parties shall appear for a **remote** Continued Initial Hearing on **February 9, 2022 at 11:45 AM.** Failure to appear may result in the issuance of a default judgment, a dismissal, or sanctions.

**Instructions to Attend Remote Hearing or Trial
Before Judge Deborah J. Israel in Remote Courtroom JM5**

If you are able to do so, you **must** participate by video. If you are unable to participate by video, you may participate by telephone, but you need to obtain the Court's permission to do so in advance of your hearing. If you have any questions or concerns, please contact chambers at JudgeIsraelChambers@dcsc.gov. If you don't have access to email, you may leave a voicemail at 202-879-1844, and we will return your call.

Please note:

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- If you are placed in the courtroom lobby, please wait until the Court admits you to the remote courtroom.
- When you reach the remote courtroom, there may already be a hearing in progress. Please wait for the judge or courtroom clerk to address you before you speak.
- Before and during your hearing, please mute your video/phone whenever you are not speaking. Doing so makes it easier for the Court to understand those speaking.

To access the remote courtroom by computer with video (two options):

(1) Open Web Browser in Google Chrome and enter:
<https://dccourts.webex.com/meet/ctbjm5>. Select Join Meeting.

OR

(2) Open Web Browser in Google Chrome and enter: <https://dccourts.webex.com>. Select Join Meeting, enter Meeting ID: 129 641 6611.

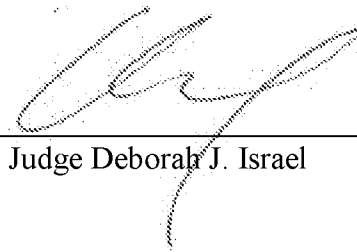
To access the remote courtroom by smartphone or tablet with video:

Go to App Store, Download WebEx App (Cisco WebEx Meetings), select Join Meeting, enter: <https://dccourts.webex.com/meet/ctbjm5>, enter your name and e-mail.

To access the remote courtroom by phone (ONLY WITH PERMISSION OF THE COURT):

Call 1 (202) 860-2110 or 844-992-4726 and enter Meeting ID: 129 641 6611##.

IT IS SO ORDERED.



Judge Deborah J. Israel

Copies to:

Inez Tobias
Inezjones9@gmail.com
Via Email
Plaintiff